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THE INTERIM

A REPORT OF INTERIM ACTIVITY . . . MONTANA LEGISLATIVE COUNCIL . . . HELENA

February 1988

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Legislator's Deduction of Living Expenses

Staff Attorney Jim Lear has sent each legislator a detailed memo, *A Legislator's Deduction of Living Expenses for Federal Income Tax Purposes*, dated January 1988. Please read it.

This memo discusses unique rules that allow a legislator to elect to deduct living expenses at the federal per diem rate without substantiating records rather than claiming actual living expenses as supported by the legislator's receipts.

Why is this important? Not only is the record-keeping requirement avoided, but a legislator is allowed a deduction based on federal per diem rates that are higher than Montana's reimbursement to the legislator, who can even claim the federal per diem rate as living expenses while attending meetings of interim committees that the legislator does not sit on and regardless of whether the legislator lodges overnight.

Rep. John Mercer and Board of Regents' Chairman Dennis Lind reviewed the Montana constitution and statutes concerning the relationship and individual roles of the legislature and the Board of Regents for the management and the appropriation control of the university system. A lengthy debate followed. There was no discernible group conclusion on how the legislative appropriation power and the Board of Regents' management power interrelate.

Representative Nelson Named to Committees

Rep. Thomas E. Nelson (R-Billings), who was appointed to fill the vacancy in District 95 left by the death of Rep. Les Kitselman, has been assigned by Speaker Marks to serve on the Business and Labor Committee, the Human Services and Aging Committee, and the Local Government Committee.

University Funding Study Committee

Peer Institutions Selected

The University Funding Study Committee met Jan. 21 when two major agenda items were the selection of peer institutions and the discussion of the role of the Legislative and Executive Branches including the Board of Regents.

Peer institutions were selected for the university units. Montana State University and University of Montana have the same peer group. The other units each have their own individual peer group. Peers were selected based on criteria which compared similarities of other institutions to Montana institutions. The major criteria used were: public institution; geographic region, role and scope; enrollment profile; and research mission. The peer survey which will be used to gather data from the peer institutions was presented to the committee. The final adjustments are being made and mailing of the survey was expected by Jan. 28

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Legislative Consumer Committee

Consumer Counsel Resigns, Executive Director Named

James C. Paine, consumer counsel, resigned to go into private practice in Portland, Ore., and the Legislative Consumer Committee has begun the process of advertising for applicants to fill the vacancy. In the meantime, Frank Buckley, utility analyst, has been named executive director. Paine had been consumer counsel since 1979.

Meeting Scheduled Feb. 12

The Legislative Consumer Committee will meet Friday, Feb. 12, in the State Capitol.

Water Policy Committee

Water Rights Adjudication Report to Be Heard

The Water Policy Committee will meet Friday, Feb. 26, to hear a report from the law firm of Saunders, Snyder, Ross & Dickson, P.C., on its early progress in studying the water rights adjudication process. Other topics tentatively scheduled for discussion include a follow-up on water research and examination of procedures used in agency review of water rights permits. The meeting will be held in the Capitol.

Environmental Quality Council

Two-Day Meeting Conducted

After a working session Jan. 28 to rebuild consensus on needed changes in subdivision regulation, the Environmental Quality Council met Jan. 29, when a major agenda item was the consideration of and recommendations to the administration on revision of rules implementing the Environmental Policy Act. The EQC has worked for the past 18 months with interested and affected parties to refine MEPA rules to incorporate judicial decisions and current practices. The EQC also heard technical committee reports on its forest practices and watershed effects study and addressed continuing issues relating to that study. Also addressed were subdivisions, pesticides, and progress on the programmatic review of oil and gas development

Western States Legislative Forestry Task Force

Pebble Beach Fire Site Visited

Sen. Elmer Severson and Rep. Bob Ream attended the Western States Legislative Forestry Task Force meeting Jan. 8, 9, and 10 at Carmel, Calif., where the major event was a tour of the site of the Pebble Beach Fire which destroyed 31 expensive homes last summer. The tour was directed by the California Department of Forestry, the largest firefighting organization in the world, which is responsible for fire management on state lands and, under contract, with many local governments. Their experience, both in fire management and in public education, gained in dealing with fires on lands having residences and other buildings would be valuable to Montana in situations such as the Pattee Canyon fire at Missoula which emphasized a need to prevent or minimize damage to private property resulting from wildfires. A technique adaptable to Montana is distribution in high hazard areas of an information packet called a Wildfire Survival Kit that provides information on simple things to do to minimize losses.

Discussion Topics

Other activities included discussions by:

- Dave Parker, British Columbia minister of forest and lands, on new forest policy directions in the province and the trade agreement recently signed by the U.S. and Canada.
- John McMahon, vice president for timberlands, Weyerhaeuser Co., on international softwood supplies and demand including anticipated production increases in South America, Australia, and New Zealand that will increase competition with America.
- Paul Barker, U. S. Forest Service regional forester, on the fires that burned vast areas of California last summer and the efforts at recovering land burned over.
- James Brown, Oregon state forester, on the widespread fires in Oregon last August.
- Allan West, deputy chief, U. S. Forest Service, on recent actions in Washington, D.C., including an increased budget for most areas; a raise in the cooperative forestry research program will provide additional support for the Montana Forest and Conservation Experiment Station.

Dues Reduced

The executive board of the Task Force recognized the Montana Legislature's reduced appropriation, cut the state's biennial dues from \$5,500 to \$2,750. This will make available to Montana members from the appropriation \$2,750 for travel expenses. The Montana members are claiming only expenses and taking no salary.

Task Force Officers

Elected to chair the Task Force was Sen. Mae Yih of Oregon. Rep. Dick Adams of Idaho was elected vice chairman.

Legislative Reorganization and Improvement Commission

LRIC Organizes, Plans Activities

Members have been appointed to the Legislative Reorganization and Improvement Commission (LRIC), which met Jan. 16 and elected Sen. J. D. Lynch chairman. The vice chairman of the commission created under the terms of HB 702 is Roger Tippy, Helena attorney and lobbyist. Other legislators appointed to LRIC are Sens. Bill Norman and Gary Aklestad and Reps. Bob Marks, John Vincent, and Dennis Rehberg. The other public, non-legislator members are Joy Bruck, Helena lobbyist for the League of Women Voters; Kay Foster, Billings, a leader of the Billings Chamber of Commerce with lobbying experience; John Lahr, Butte, veteran lobbyist for Montana Power Co.; Ed Smith, Helena, former chief clerk of the House; and Mike Voeller, Helena, editor of the Independent Record.

LRIC is empowered to "make a detailed and thorough study of the legislative branch... and the organization thereof." Because the \$15,000 appropriated to LRIC was to be used only to supplement private or federal funds and the staffing was to be independent of legislative agencies and recognizing the need to focus the interests, three subcommittees were appointed:

- a finance subcommittee to raise money and establish a budget;
- a job search subcommittee to consider staffing options and implementation of the chosen option; and
- a priorities subcommittee to focus the work of the group.

At the first meeting, the Commission members ran through a list of their interests which covered the full range of possibilities. The most attention was given to the perceived need to reduce legislative work by devising an acceptable method of

restricting the number of bills either introduced or considered, e.g., how to kill a bill and keep it killed.

The date for the second meeting of LRIC has not been set, but it will probably be sometime in February.

Legislative Finance Committee

The Legislative Finance Committee met Jan. 22 and 23 and heard several staff reports upon which committee action was taken. The major items addressed and actions taken:

General Fund Revenue

According to the revised forecasts, the general fund is expected to end the 1989 biennium with a balance of \$2.1 million. The ending fund balance was expected to be \$5.4 million at the conclusion of the 1987 legislative session. The revisions included a \$15.1 million reduction in anticipated general fund revenue, largely due to lower corporation tax collections, and a \$15.7 million decrease in general fund expenditures on public school support. Declining enrollments reduced 1989 biennium school costs by \$10.2 million, while non-general fund revenues, particularly from U.S. mineral royalties, are now expected to be \$5.5 million higher than the post-session forecast. Despite being one-fourth through the biennium, little evidence is currently available on the actual state revenue gain from federal tax reform. The importance of that revenue gain to the total revenue picture adds to the usual uncertainties of forecasting.

Trust Lands Income

A report entitled "Trust Lands Income" included options for selling trust lands, increasing the grazing rental rates of trust lands to fair market value, and making the payment in lieu of taxes a leaseholder obligation rather than a general fund obligation. The committee voted to request that the Department of State Lands prepare a plan to appraise trust lands and establish a fair market value, and to assess the feasibility of selling the lands, and request the Board of Land Commissioners to prepare a plan which details how they will achieve a fair market value on each grazing lease negotiated. The committee asked the staff to report on alternative distribution and funding options for the payment in lieu of taxes.

Collective Bargaining In The University System

Officials of the Montana University System reported on the collective bargaining process in the university system. Sue Romney, chief negotiator in the commissioner's office, reviewed the process and outlined some of the goals of the

Board of Regents and the commissioner's office for future negotiations.

The Board of Regents at their January meeting approved a contract increasing faculty salaries at the University of Montana for fiscal years 1990 and 1991. Commissioner of Higher Education Carrol Krause reported that the regents agreed to a 6% increase in each fiscal year 1990 and 1991 in addition to any pay plan increases provided by the 51st Legislature. Commissioner Krause stated that the increases are justified in order to keep Montana university faculty salaries competitive in the national market for qualified teachers. Board of Regents chairman Dennis Lind stated that the Board stands ready to make the difficult decisions to increase tuition or shut down programs or both if the Legislature fails to fund the increases approved by the Regents.

Several members of the Legislative Finance Committee criticized the regents' move as an assumption of the legislative authority to appropriate funds. There was concern that the regents' approval of salary increases in the university system sets the stage for other groups of state employees to demand at least as much increase from the legislature.

Tort Claims Division

The Tort Claims Division administrator described the division's responsibilities, the viability of the state's self-insurance fund, and the philosophy of the division, which is responsible for protecting the state from property and liability loss. Part of the loss is covered by commercial insurance policies. For example, boiler insurance, helicopter liability, and physical damage are covered by commercial insurance. If commercial insurance is unavailable or not cost effective, the state self insures. Self-insured risk coverages include comprehensive general liability and automobile liability. Premiums for the commercial insurance and contributions to the state self-insurance fund are collected from all state agencies.

The soundness of the self-insurance fund has been questioned in recent years. The most recent actuarial report (1986) found the reserve deficiency to be \$38 million. According to the report submitted by the division, recent legislative action which limits the state's liability to \$750,000 per individual or \$1.5 million per occurrence should have the effect of reducing the reserve deficiency. The next actuarial review is scheduled for 1988.

The division also protects the state from loss by adjusting claims against state government's various entities and by defending it in any lawsuit that may be brought against it under the state tort claims act. More than 175 lawsuits are pending against the State of Montana. The division has been successful in defending the state. Since January 1986, the Tort Claims Division and various attorneys representing the state have taken 18

cases to trial. Thirteen resulted in no damages awarded to the plaintiffs.

The philosophy of the Tort Claims Division towards lawsuits is to identify the cases which seem to have merit, settle those as quickly as possible, and to prepare for trial the remaining cases that are without merit. This approach is intended to decrease the settlement value of claims and ultimately reduce the number of lawsuits.

Education Finance Lawsuit

The decision of the district court rendering the state's public school funding laws unconstitutional was discussed in the K-12 Education Subcommittee and the full legislative Finance Committee. The committee voted to send a letter to all defendant parties to the lawsuit, encouraging them to appeal the district court decision to the Montana Supreme Court.

Revenue Oversight Committee

Next Meeting Scheduled Feb. 26

The next meeting of the Revenue Oversight Committee is set for 9 a.m. Friday, Feb. 26, in Room 104 of the Capitol.

Licensing of Gasoline Exporters Approved

At its meeting on Jan. 15, the Revenue Oversight Committee approved a draft bill intended to plug loopholes in the law on taxation of gasoline exported from Montana. The draft, which was approved by the Department of Revenue and by representatives of the petroleum industry, continues the tax exemption on gasoline exported from Montana after defining "exporter" and requiring that an exporter be licensed as a "gasoline distributor". Gasoline exported by any person who is not an "exporter" will be subject to the Montana tax, but a claim for refund of the tax may be filed along with documentation to prove that the gasoline was consumed outside of Montana. The draft bill will be prepared for introduction in the 1989 Legislature as a recommendation of the Revenue Oversight Committee.

Proposed Legislation on Protested Taxes

The Legislative Council staff presented the Revenue Oversight Committee four bill drafts dealing with property tax protests at the Jan. 15 meeting. The bill drafts resulted from consultations with legislators, school district officials, and other interested persons. The proposals were intended to alleviate some of the financial difficulties facing taxing jurisdictions as a result of large-scale property tax protests. The suggested provisions would include extension of the payback period should the

taxing jurisdiction lose the protest, exclusion of protested property valuation from a jurisdiction's tax base for purposes of computing mill levies, and the handling of interest payments on the taxes held in the protest accounts. After recommending some changes, the Committee directed two of the drafts be combined into one bill to be sent to members for their consideration before the next meeting.

Property Appraisal and Assessment Study

Testimony in the study of the property appraisal and assessment system under HJR 48 was heard by the Committee at the Jan. 15 meeting. The Montana Association of Counties (MACo) presented a written response to the questions posed in the HJR 48 study plan. MACo is considering an initiative that would return the appraisal and assessment functions to the counties under the policy direction of a state equalization commission. The Montana County Assessors Association presented a written response and announced support for MACo's proposed amendment. Written testimony was also presented by the Montana Appraisal Association, which prefers replacing the elected assessor with an appointee under the jurisdiction of the Department of Revenue.

Net Proceeds Issues Under Review

The Revenue Oversight Committee staff has been observing the negotiations between the Department of Revenue and representatives of the oil and gas industry over rules changes for net proceeds taxation. Those discussions began last summer as a result of industry concern about audit procedures used by the department. Among items under consideration are definitions, valuation of oil and gas production, and allowable deductions. Industry and the department will meet in early February for final review before the department formally proposes the new rules.

Crow Coal Case Decision Considered

The refusal of the U. S. Supreme Court to hear the state's appeal of the Crow Coal case was the subject of a background briefing from the Office of Budget and Program Planning and the attorney general's staff at the committee's Jan. 15 meeting. After the July-September 1987 quarter, the last for which production reports and tax payments have been received, total held in escrow from the production in the Ceded Strip was \$22,244,230. Action has not yet been taken by the federal court to distribute these funds.

- Provide penalties in the Constitution for due process violations
- Increase state minimum wage
- Require valid election on qualified ballot issues

Legal Memorandums

- A Legislator's Deduction of Living Expenses for Federal Income Tax Purposes
- Procedures for Obtaining Information Under Federal and State Laws

Library Completes Move to Room 102

The Library is now open for business in Room 102 following the completion of the move to the new location during January.

New Videotapes Now Available

The Foundation for State Legislatures donated eight videotapes to the library.

- Legislative Leadership: An Overview (11:00)
- What Legislators Need to Know About Medical Malpractice (26:00)
- Liability Insurance: Coping with a Crisis (24:00)
- What Legislators Need to Know About Long Term Care Insurance (14:00)
- 12 Questions: What Legislators Need to Know About Uncompensated Hospital Care. (update of 1985 video) (20:00)
- Privatization of Government Services (23:00)
- State Legislative Issue: Household Hazardous Waste (23:00)
- Safety and Economy: Hazardous Materials Transportation (20:00)

If you want to check out one of these tapes, please call the library at 444-3064.

Coal Tax Oversight Subcommittee

Crow Coal Case Added to Agenda

The agenda for the Friday, Feb. 5, meeting of the Coal Tax Oversight Subcommittee has been broadened to include a discussion of the ramifications of the decision by the U. S. Supreme Court to refuse to hear an appeal of the Crow Coal case. The action by the high court leaves in effect the decision of the Ninth Circuit Court of Appeals that the State of Montana has no right to impose its severance tax on coal mined from the Ceded Strip, an area detached from the Crow Reservation after its creation. Since the litigation was commenced in 1982, the severance tax on that coal has been deposited in an escrow account, which with accumulated interest now exceeds \$22 million. The Crow Coal case will be discussed in the afternoon, following the morning agenda which

Legislative Council

Initiatives Received

- Create yearly statewide grand jury

consists of reports from state agencies receiving allocations of coal severance tax money. The meeting will be in Room 104 of the Capitol.

Coordinated Study of Basic Education and Its Costs

Relationships of the Activities

HJR 16 anticipated the possibility of the recent district court decision declaring the Montana school foundation system unconstitutional and in preparation for a legislative response set forth a consensus-building process that involves the Board of Public Education, the Legislative Finance Committee, and the Joint Interim Subcommittee on Basic Education. The Interim Subcommittee is to monitor the Board's progress toward establishment of accreditation standards that could help define basic education for school funding purposes. The Legislative Finance Committee is requested to develop cost components of the existing and proposed accreditation standards and to evaluate state financing methods for providing a basic education in the schools of Montana.

Tentative Calendar of Meetings

Following is a tentative calendar of meetings for the Board and the Interim Subcommittee:

- January--Action Groups met across the state to refine work and compare with old standards
- Friday, Feb. 26--Second Implementation Action Group meeting in Helena to examine the results of the final Action Group meetings in January
- Friday, April 15--Third Implementation Action Group meeting in Helena to prepare draft document
- Saturday, April 16--The Joint Interim Subcommittee on Basic Education meeting in Helena to review the draft documents and the progress of Project Excellence
- Monday and Tuesday, May 2 and 3--The Board of Public Education meeting in Helena to review draft documents
- May--The Board will hold public hearings in nine Montana cities on the proposed standards
- July 9, 10, and 11--The Board and Implementation Group meeting at University of Montana campus to respond to public hearings,

address compliance, assessment, funding, and other legislative issues

- Summer months--The Board of Public Education, the Joint Interim Subcommittee on Basic Education, and the Legislative Finance Committee's Subcommittee on Education may meet jointly to address other concerns in HJR 16.

Montana--Western Canadian Provinces Boundary Advisory Committee

Trade Policy Forum Scheduled Feb. 10

The joint meeting of the Montana-Western Canadian Provinces Boundary Advisory Committee with a delegation from Alberta will begin at the College of Great Falls at 8:30 a.m. Wednesday, Feb. 10, with a trade policy forum that will last throughout the day. Topics and speakers will include:

- U.S. and Canadian federal government perspectives and overview of the U.S.-Canada Free Trade Agreement, John Blackwood, Consul General; Robert Reinstein, Office of the U.S. Trade Representative;
- Regional economic analyses of the impacts of free trade, David Elton, Canada West Foundation; Lauren McKinsey, 49th Parallel Institute;
- "Main Street" perspectives, Great Falls and Lethbridge Chambers of Commerce;
- Impact of freer trade on the energy sector, private sector panelists from Montana and Alberta;
- Luncheon Address, Bruce Stokes, National Journal correspondent from Washington, D.C.;
- Impacts of freer trade on agriculture, manufacturing, and services, private sector panelists.

A reception, dinner, and entertainment for committee members is scheduled for 6-9 p.m. at the C. M. Russell Museum.

Meeting of Committee Set on Feb. 11

On the following day, Thursday, Feb. 11, the Committee will meet at the College of Great Falls to consider the items on the agenda reported in the last issue of *The Interim*

February

Sunday Monday Tuesday Wednesday Thursday Friday Saturday

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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29					

**March – No Meetings
Scheduled as of Jan. 28.**

All Meetings Subject to Change!

Coal Tax
Oversight
Subcommittee
9 am, Rm 104

Legislative
Consumer
Committee

Montana-Western Canadian
Provinces Boundary Advisory
Committee
College of Great Falls

Rev. Oversight
Comm. Rm 104

Water Policy
Comm. Rm 108

**President's
Day**

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